

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:10CR23-RJC

UNITED STATES OF AMERICA,

Plaintiff,

v.

KEITH FRANKLIN SIMMONS,

Defendant,

PETITION OF
JAMES R. VANNOY & SONS
CONSTRUCTION COMPANY, INC.

**CONSENT ORDER FOR
THIRD-PARTY PETITION AND
FORFEITURE OF SUBSTITUTE RES**

THIS MATTER is before the Court by consent of the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina and James R. Vannoy & Sons Construction Company, Inc. ("Petitioner"), through counsel, pursuant to Fed. R. Crim. P. 32.2(c). The government and petitioner have consented to this Order as a final adjudication and settlement of all matters with regard to the following properties ("the Subject Properties") covered by the Consent Order and Judgment of Forfeiture filed herein on December 16, 2010, which is a preliminary order with respect to the Subject Properties:

Real property at Jefferson Station, 215 South Jefferson Avenue, West Jefferson, North Carolina 28694, further described as Units 230, 231, and 232 of Jefferson Station Condominium, identified in a deed recorded in the Ashe County, North Carolina Register of Deeds Office, Deed Book 387, Page 27 (hereafter known as "the Condo"); and

Real property at 215 South Jefferson Avenue, West Jefferson, North Carolina 28694, further described as the Jefferson Station property, identified in a deed recorded in the Ashe County, North Carolina Register of Deeds Office, Deed Book 386, Page 2465 (hereafter known as "the Phenix Building").

The government and petitioner have stipulated and agreed and THE COURT FINDS as follows:

1. Prior to the issuance of an Order and Lis Pendens in the related case of 3:09MC222, prior to the issuance of the Bill of Indictment in this case, and reasonably without knowledge of the alleged criminal activity of Simmons, Petitioner performed significant construction on commercial real properties of Simmons and his business entities;

2. Petitioner was paid for some construction but remains owed money and owes money to subcontractors;

3. On August 31, 2009, after Defendant failed to pay in full for construction debt, Petitioner filed a Lien on the Phenix Building in the amount of \$511,338.72. Then, on September 15, 2009, Petitioner obtained a Promissory Note for \$506,967.31 in outstanding Phenix Building construction debt, plus 8% interest per annum after default until paid, due from Simmons on or before December 15, 2009. On September 14, 2009, Petitioner secured the debt with a Deed of Trust on the Condo. The Deed of Trust is at Ashe County Register of Deeds Book 401, Page 2112. On May 10, 2010, after Defendant again failed to pay construction debt, Petitioner obtained a Default Judgment in Ashe County Superior Court against Defendant in an amount of \$547,564.89 plus interest at the rate of 8% per annum from the date of the judgment until the judgment is paid in full. In the Default Judgment, the Ashe County Superior Court also ordered the Phenix Building sold;

4. Petitioner wishes to foreclose on and sell the Jefferson Station Condo in Ashe County Superior Court and to sell the Phenix Building pursuant to a Default Judgment obtained in Ashe County Superior Court;

5. The United States Marshals Service appraises the Jefferson Station Condo at \$325,000. The United States Marshals Service appraises the Phenix Building at \$250,000. Thus, the total appraised value of the Jefferson Station Condo and the Phenix Building is \$575,000 and the total secured debt due and owing to petitioner is \$547,564.89 plus interest at the rate of 8% per annum from the date of the Default Judgment until the Default Judgment is paid in full.

6. The Government does not oppose the sale by Petitioner of the Jefferson Station Condo and the Phenix Building, provided any net proceeds of sale, after deduction of amounts due and owing under the Default Judgment plus reasonable and necessary expenses approved of in writing by the Government, are immediately turned over to the Court for forfeiture as a substitute res for the real properties at Jefferson Station Condo and the Phenix Building.


WHEREFORE, the Court SO ORDERS that:

1. The Government will release the Order and Lis Pendens currently on file against the Jefferson Station Condo and Phenix Building by filing a copy of this Consent Order in the Ashe County Register of Deeds;

2. This Consent Order for Third Party Petition is granted and, notwithstanding 21 U.S.C. § 853(k), Petitioner is permitted to exercise rights under state law to obtain title to the real properties and to sell the real properties, provided that the Government approves in writing of reasonable necessary expenses and that Petitioner turns over all net proceeds, after deduction of amounts due and owing under the Default Judgment and reasonable and necessary expenses approved of by the Government, to the Government for forfeiture in this case as a substitute res.

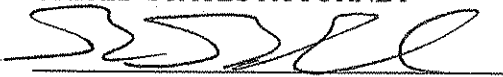
3. Each party shall bear its own costs, including attorneys fees, in this forfeiture action.

Signed this 10 day of May, 2011.


ROBERT J. CONRAD
UNITED STATES DISTRICT JUDGE

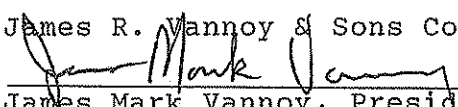
ON MOTION OF AND
BY CONSENT OF THE PARTIES:

ANNE M. TOMPKINS
UNITED STATES ATTORNEY



Benjamin Bain-Creed
Assistant United States Attorney

Dated: 5/4/11

James R. Vannoy & Sons Construction Company, Inc.

By: 
James Mark Vannoy, President
Petitioner

Dated: 4/25/11


Jay Vannoy, Esq.
Attorney for petitioner

Dated: 4/28/11